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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ANTHONY VOGELSANG,

Defendant and Appellant.

C078855

(Super. Ct. No. 62096408)

Defendant Christopher Anthony Vogelsang, having obtained the reduction of a prior felony conviction to a misdemeanor under Penal Code¹ section 1170.18 (Proposition 47, as approved by voters Gen. Elec., Nov. 4, 2014, eff. Nov. 5, 2014 (Proposition 47)), appeals from the trial court's order refusing to strike a sentencing enhancement for the prior prison term served for that felony. The issue whether Proposition 47 requires the striking of such a sentencing enhancement is currently

¹ Undesignated statutory references are to the Penal Code.

pending before our Supreme Court. (*People v. Valenzuela* (2016) 244 Cal.App.4th 692, review granted Mar. 7, 2016, S232900.) While awaiting the high court's guidance, we conclude the trial court's order was correct.

FACTUAL AND PROCEDURAL BACKGROUND

We omit the facts of defendant's underlying offenses as irrelevant to the sole issue on appeal.

On September 13, 2011, defendant entered into a plea agreement under which he pleaded guilty to possession for sale of a controlled substance (Health & Saf. Code, § 11378); sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a)); and failure to appear while on bail (§§ 1320.5, 12022.1, subd. (b)). Defendant admitted a prior strike for robbery and two prior prison terms, one for the robbery conviction and one for possession of a controlled substance.²

On November 17, 2011, the trial court sentenced defendant to serve nine years eight months in state prison, including six years (the midterm, doubled for the strike) for sale of methamphetamine; one year four months (one-third the midterm, doubled) consecutive for possession of a controlled substance for sale; one year four months consecutive for failure to appear while on bail; and one year for the prior prison term stemming from defendant's conviction for possession of a controlled substance. The court struck the prior prison term enhancement for defendant's prior robbery conviction.

On January 22, 2015, defendant filed a petition pursuant to Proposition 47 to have his prior felony conviction for possession of a controlled substance reduced to a misdemeanor. Simultaneously, he filed a separate petition for resentencing, seeking to

² This court incorporated the record from that case into the present appeal.

strike the one-year prior prison term enhancement based on that offense that was imposed as part of his sentence in 2011.

The trial court granted the petition to reduce the conviction for possession of a controlled substance to a misdemeanor. Thereafter, the court denied the petition to resentence, thus refusing to strike the prior prison term enhancement.

DISCUSSION

Defendant contends that because his prior felony conviction has become a misdemeanor “for all purposes” (§ 1170.18, subd. (k)), it can no longer be used to support a sentencing enhancement for a prior felony conviction (§ 667.5, subd. (b)). Pending our Supreme Court’s decision on this question, we adhere to our view defendant’s contention lacks merit.

The one-year prior prison term enhancement (§ 667.5, subd. (b)) is “an enhancement available for ‘any felony’ if the felon served time in prison for ‘any felony’ and showed an inability to reform.” (*People v. Jones* (1993) 5 Cal.4th 1142, 1150.) When defendant was sentenced in the current case, the prior conviction at issue was a felony and he had served a prison sentence for that conviction. Section 1170.18 does not alter that fact.

Moreover, section 1170.18 contains no procedure for striking a prison prior merely because the felony underlying the enhancement has been reduced to a misdemeanor, and nothing in the language of the statute or in any authority cited by defendant indicates the statute was intended to have such retroactive collateral consequences. Put simply, section 1170.18 does not address sentence enhancements at all.

For all of these reasons, we conclude defendant is not entitled to the relief he seeks.

DISPOSITION

The order denying resentencing is affirmed.

_____/s/
HOCH, J.

We concur:

_____/s/
RAYE, P. J.

_____/s/
HULL, J.